

# EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mark Fitzhenry,

Plaintiff,

vs.

Nations Lending Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.

**SUMMONS**

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to the said Complaint on the subscriber, David A. Maxfield, Esquire, at his office at P.O. Box 11865, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint. If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVE MAXFIELD, ATTORNEY, LLC

*s/Dave Maxfield*

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DATED: November 15, 2021  
Columbia, South Carolin

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Mark Fitzhenry

Plaintiff

vs.

Nations Lending Corportion

Defendant

Civil Action No.

**COMPLAINT**

**(Class Action)**

**(Jury Trial Requested)**

Plaintiff Mark Fitzhenry (“Plaintiff”), on behalf of himself and all others similarly situated, makes the following allegations against defendant Nations Lending Corporation (“Defendant”) based upon Plaintiff’s own knowledge, information, attorney investigation, and belief:

**PRELIMINARY STATEMENT**

1. The Plaintiff brings this putative class action pursuant to the South Carolina Telephone Privacy Protection Act (“SCTPPA”), S.C. Code § 37-21-10, *et seq.*

2. Mr. Fitzhenry alleges that Nations Lending Corporation sent telemarketing calls to individuals, like the Plaintiff, on the National Do Not Call Registry despite not having their prior express written consent.

3. Furthermore, Mr. Fitzhenry alleges that Nations Lending Corporation did not properly identify itself at the beginning of the telemarkeitng call as required by the SCTPPA.

4. Because these calls were transmitted using technology capable of generating thousands of similar calls per day, he sues on behalf of a proposed class of other persons who received similar calls.

### **JURISDICTION**

5. Plaintiff is a State of South Carolina resident.

6. Defendant Nations Lending Corporation is an Ohio corporation that is registered to do business in this state.

7. This Court has jurisdiction over this action because at least some of the events giving rise to this claim occurred in South Carolina, including this is where the calls were made into.

8. Venue is proper based on the Plaintiff's receipt of the calling conduct at issue here in this jurisdiction.

### **THE SOUTH CAROLINA TELEPHONE PRIVACY PROTECTION ACT**

9. On May 18, 2018, the State of South Carolina signed into law the South Carolina Telephone Privacy Protection Act, S.C. Code § 37-21-10, *et seq.*

10. The SCTPPA prohibits, *inter alia*, a party from initiating, or causing to initiate, a telephone solicitation to a South Carolina telephone number that has been listed on the National Do Not Call Registry. *See* S.C. Code § 37-21-70.

11. The SCTPPA requires that "at the outset of a telephone solicitation, a telephone solicitor shall provide... the name of the person on whose behalf the telephone solicitation is being made." 37-21-40(A).

12. The SCTPPA allows for aggrieved individuals to initiate an action and recover \$1,000 for each negligent violation and \$5,000 for each willful violation of the SCTPPA. S.C. Code § 37-21-80.

**FACTUAL ALLEGATIONS**

13. Mr. Fitzhenry owns a cellular telephone number 843-637-XXXX.
14. Mr. Fitzhenry's number is personal and used for residential purposes.
15. Mr. Fitzhenry's number has been on the National Do Not Call Registry since 2019.
16. Despite this, Nations Lending Corporation Services contacted the Plaintiff on November 8, 2021 on his number.
17. However, Nations Lending Corporation did not identify itself at the beginning of the call.
18. Instead, the call began with, "My name is Annie, the license advisor on behalf of Mortgage Lending Solutions. How are you?"
19. Nations Lending was contacting individuals on the National Do Not Call Registry with its telemarketing calls, and as such had reason to obfuscate their identity.
20. As the company was not adequately identified, Mr. Fitzhenry continued the call and answered a series of questions about a mortgage.
21. The telemarketing call to Mr. Fitzhenry appeared to follow a script, which is consistent with the fact that *en masse* calls were made.
22. Eventually, Mr. Fitzhenry spoke with a Kevin Shaver, who identified the Defendant.
23. Mr. Shaver continued to solicitation by offering Nations Lending services.
24. To confirm the conversation, Mr. Shaver sent Mr. Fitzhenry an e-mail.
25. The Plaintiff, like all class members below, were harmed and had their privacy invaded.

26. Indeed, some of them received calls despite taking the affirmative step of registering their number on the National Do Not Call Registry.

### **CLASS ACTION ALLEGATIONS**

27. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the provisions of Rule 23 of the South Carolina Rules of Civil Procedure on behalf of the following class:

All persons with a South Carolina area code to whom (1) at any time from May 18, 2018 until trial, (2) Defendant, or someone on its behalf, (3) placed at least one call, (4) to a number on the National Do Not Call Registry or (5) where it failed to provide the telephone number and address at which the caller may be contacted at the outset of the call.

28. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

29. This action has been brought and may be properly maintained on behalf of class proposed herein under Rule 23 of the South Carolina Rules of Civil Procedure.

30. Pursuant to SCRP 23(a)(5) the amount in controversy for each class member exceeds one hundred dollars, as the statutory damages at issue are for a minimum of \$1,000.

31. Class members are identifiable through phone records and phone number databases that will be obtained through discovery.

32. Based on the automated nature of calling campaign, there are likely thousands of class members. Individual joinder of these persons is impracticable.

33. There are questions of law and fact common to Plaintiff and the proposed class, including:

- a. Whether the Defendant called numbers on the National Do Not Call Registry;
- b. Whether the Defendant's telemarketing script required it to adequately identify itself at the outset of calls;
- c. Whether the Defendant had written consent to place such calls; and
- d. Whether the Plaintiff and the class members are entitled to statutory damages because of the Defendant's actions.

34. Plaintiff's claims are based on the same facts and legal theories as class members' claims, and therefore are typical of the class members' claims.

35. Plaintiff is an adequate representative of the class because his interests do not conflict with the class's interests, he will fairly and adequately protect the class's interests, and he is represented by counsel skilled and experienced in litigating class actions.

36. The Defendant's actions are applicable to the class and to Plaintiff.

**FOR A FIRST CAUSE OF ACTION**

**(Violation of SC Telephone Privacy Protection Act)**

37. The above allegations are repeated and realleged herein as if set forth herein.

38. The Defendant violated the SC Telephone Privacy Protection Act by contacting a South Carolina number that was listed on National Do Not Call Registry.

39. The Defendant also failed to identify themselves and provide the name of the person on whose behalf the telephone solicitation is being made during the telemarketing calls in violation of the SCTPPA.

40. The Plaintiff also seeks an injunction, which the SC Telephone Privacy Protection Act explicitly permits, preventing the Defendant from calling a South Carolina number on the National Do Not Call Registry.

**PRAYER FOR RELIEF**

Plaintiff requests the following relief:

- A. That the Court certify the proposed class;
- B. That the Court appoint Plaintiff as class representative;
- E. That the Court appoint the undersigned counsel as counsel for the class;
- F. That the Court enter a judgment permanently enjoining the Defendant from calling a South Carolina number on the National Do Not Call Registry.
- G. That the Court enter a judgment awarding Plaintiff and all class members statutory damages of \$1,000 for each negligent violation of the SC TPPA and \$5,000 for each knowing or willful violation;
- I. That the Court enter an order awarding the Plaintiff reasonable attorneys' fees and costs; and
- J. That the Plaintiff and all class members be granted other relief as is just and equitable under the circumstances.

**Plaintiff requests a jury trial as to all claims of the complaint so triable.**

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Dated: November 15, 2021

## AFFIDAVIT OF SERVICE

<b>Case:</b> 2021CP1005189	<b>Court:</b> IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT	<b>County:</b> COUNTY OF CHARLESTON	<b>Job:</b> 6357703
<b>Plaintiff / Petitioner:</b> MARK FITZHENRY		<b>Defendant / Respondent:</b> NATIONS LENDING CORPORATION	
<b>Received by:</b> Dewsnap & Associates, LLC		<b>For:</b> PARONICH LAW, P.C.	
<b>To be served upon:</b> NATIONS LENDING CORPORATION C/O NATIONAL REGISTERED AGENTS, INC.			

I, WILLIAM H. DEWSNAP, III, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Recipient Name / Address:** Dahrlena Mitchell, Process Specialist , 155 FEDERAL ST STE 700, BOSTON, MA 02110

**Manner of Service:** Registered Agent, Nov 17, 2021, 3:41 pm EST

**Documents:** SUMMONS AND COMPLAINT

**Additional Comments:**

1) Successful Attempt: Nov 17, 2021, 3:41 pm EST at 155 FEDERAL ST STE 700, BOSTON, MA 02110 received by Dahrlena Mitchell, Process Specialist . Age: 55; Ethnicity: Caucasian; Gender: Female; Weight: 115; Height: 5'5"; Hair: Red;



11/17/2021

WILLIAM H. DEWSNAP, III

Date

Process Server and Disinterested Person

Dewsnap & Associates, LLC  
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Boston, MA 02109  
617-367-1070